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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/458,897	12/10/1999	TOM GIAMMARRESI	533/047	9422

26291 7590 07/08/2005

MOSER, PATTERSON & SHERIDAN L.L.P.
595 SHREWSBURY AVE, STE 100
FIRST FLOOR
SHREWSBURY, NJ 07702

EXAMINER

CHUNG, JASON J

ART UNIT	PAPER NUMBER
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2617

DATE MAILED: 07/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/458,897

Applicant(s)

GIAMMARRESI, TOM

Examiner

Jason J. Chung

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 2 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 4/26/05 have been fully considered but they are not persuasive. The applicant argues on pages 10-12 of the response that Duso in view of Mann in further view of Craig fails to disclose the claimed invention since it cannot be operably combined since it does not teach or disclose the Applicant's invention as a whole. The applicant further attacks each of the references individually.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

The applicant argues on pages 12-13 of the response that Duso in view of Mann in further view of Craig fails to disclose the claimed invention since it does not disclose concurrently executing session-state data of the video session. Specifically, according to the applicant, Duso in view of Mann in further view of Craig fails to disclose who the subscribers are, which set top boxes are active...(pages 12-13 of applicant's response). The examiner respectfully disagrees with this assertion. This is not in the claim. Moreover, Mann discloses the video session comprises (video: column 9, lines 1-5) concurrently executing the video session (concurrently: column 7, line 45-column 8, line 24) on at least one distributed managing module 24 (column 6, lines 37-43) associated with each of the primary head-end controller 12a-12e and the at least one secondary head-end controller 12a-12e. Mann discloses it would be advantageous to build a more reliant fault tolerant system (column 2, lines 6-14).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., who the subscribers are, which set top boxes are active, what video is being watched, etc.) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The applicant further argues on pages 13-14 of the response that the combined references do not solve the same problems as the applicant's invention solves. In response to applicant's argument that the combined references do not solve the same problems as the applicant's invention solves, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

The applicant argues on pages 14-15 of the response that Duso in view of Mann in further view of Craig in further view of Beal fails to disclose the claimed invention for the same reasons as claims 1, 3-6, and 11 rejections. The examiner respectfully disagrees with this assertion and points to the examiner's reasoning stated above.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3-6, 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duso (US Patent # 5,892,915) in view of Mann (US Patent # 5,862,312) in further view of Craig (US Patent # 5,790,176).

Regarding claim 1, Duso discloses distributing and sharing processing loads (providing parallelism: column 5, lines 48-49). Duso discloses dual redundant controller 28, 29 provide hot failover redundant configuration (column 6, lines 28-34), which meets the limitation on increasing fault tolerance between provider equipment (20, column 6, lines 66-67) and subscriber equipment 54 of an interactive information distribution system (VOD, etc. column 5, lines 35-37).

Duso discloses receiving at a head-end, a request for video information from the subscriber (client) equipment (column 8, lines 27-32).

Duso discloses executing a video session from at least one managing module (contain application software to appropriately schedule (execute) the service request; column 8, lines 48-56) on a primary head end controller (28, figure 2) at the head end.

Duso discloses dedicating, at the head-end, at least one secondary head-end controller 29 having the at least one managing module as a reserve resource for executing the video session (28 and 29 are dual redundant controllers (column 6, line 28)) that run an operating system to provide a hot-failover redundant configuration (column 6, lines 31-36), that has application software to schedule (execute) the service request (column 8, lines 48-56).

Duso discloses, which meets the limitation on streaming, from a stream server 21, the video information to the requesting subscriber 54 equipment during a normal mode of operation (column 6, lines 46-48).

Duso fails to disclose wherein... one secondary head-end controller. Mann discloses the video session comprises (video: column 9, lines 1-5) concurrently executing the video session (concurrently: column 7, line 45-column 8, line 24) on at least one distributed managing module 24 (column 6, lines 37-43) associated with each of the primary head-end controller 12a-12e and the at least one secondary head-end controller 12a-12e. Mann discloses it would be advantageous to build a more reliant fault tolerant system (column 2, lines 6-14). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Duso to execute the video session...secondary head-end controller and storing session state data...on storage device as taught by Mann in order to construct a more reliable and fault tolerant system.

Duso and Mann are silent as to storing session state data...on at least one storage device. Craig discloses storing session state data from an executed video session on at least one storage device (session manager 310 contains session supervisor that tracks and records (stores in storage device 310/312) all data pertinent to each session (column 13, lines 46-56) and maintains routing information for each session (column 14, lines 7-15)), for the benefit of using the information to restart an interrupted session (column 14, lines 13-15). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Duso in view of Mann with storing session state data from an executed video session on at least one storage device, as taught by Craig for the benefit of using the stored information

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to continue processing an interrupted video session in an interactive information distribution system.

Regarding claim 3, Duso discloses executing the session on at least one non-distributed managing module (Duso: 29) associated with the primary head-end controller (provides a hot-failover redundant configuration; column 6, lines 28-36).

Regarding claim 4, the combined systems of Duso, Mann, and Craig discloses the method comprising:

Processing the session-state data through the at least one distributed managing module (Mann: column 7, line 45-column 8, line 24) concurrently on the primary head-end controller and the at least one secondary head-end controller (Duso:28 and 29), wherein the at least one distributed managing module on the primary head-end controller and the at least one secondary head-end controller is an active mode (Duso: 28 active); and

Processing the session-state data from the at least one non-distributed managing module on the primary head-end controller (Duso: 28), wherein the at least one non-distributed managing module on the primary head-end controller is in an active mode (Duso: 28 active), and wherein the at least one non-distributed managing module on the secondary head-end controller is in a standby mode (Duso: 29 provides a hot-failover redundant configuration; column 6, lines 28-36).

Regarding claim 5, the combined systems of Duso, Mann, and Craig discloses the method comprising:

Processing the session state data (Craig: uses stored information (session state data) in the case to restart an interrupted session; column 14, lines 13-15) produced by the primary head end controller (Duso: 28) via the at least one secondary head end controller (Duso: 29) in a failure

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mode of operation (Duso: 28 inoperable), wherein the primary head end controller becomes inoperative (Duso: 29 provides a hot failover redundant configuration; column 6, lines 28-36).

Regarding claim 6, the combined systems of Duso, Mann, and Craig discloses the method comprising:

Streaming video information from a stream server to an access controller in the normal mode of operation, wherein the primary head-end controller (Duso 28) manages the video session between the stream server 21 (Duso: column 6, lines 46-60) and at least one access controller 53 (Duso: column 6, lines 56-60).

Streaming video information from the stream server to the access controller in the failure mode of operation, wherein the secondary head-end controller 29 manages the video session between the stream server 21 (Duso: column 6, lines 46-60) and the access controller 53 (Duso: column 6, lines 56-60).

Regarding claim 11, the limitations in claim 11 have been met in claim 1 rejection. Duso discloses the additional limitations of a stream server 21 (column 6, lines 46-60) a plurality of access controllers (arrays of cross bar switches: column 6, lines 48-52).

1. Claims 7-10, 12-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duso in view of Mann in further view of Craig in further view of Beal (US Patent # 5,155,845).

Regarding claim 7, the combined systems of Duso, Mann, Craig, and Beal discloses the method comprising:

Storing the session state data (Craig: session manager 310 contains session supervisor 312 that tracks and records all data pertinent to each session (column 13, lines 46-56) and maintains routing information for each session (column 14, lines 7-15)) produced by the primary

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head-end controller (Duso: 28) on at least one storage device (Craig: the storage device necessary to store data for 310/312) coupled to the primary head end controller

Storing the session state data (Craig: session manager 310 contains session supervisor 312 that tracks and stores all data pertinent to each session (column 13, lines 46-56) and maintains routing information for each session (column 14, lines 7-15)) produced by the at least one secondary head end controller (Duso: 29).

However, they fail to store data from one controller on a storage device of the other controller as claimed.

Beal discloses storing the session state data produced by the primary head end controller 121 (figure 3) on at least one storage device 111 coupled to the primary head end controller (column 6, lines 54-58) and storing the session state data produced by the at least one secondary head end controller 101 (figure 3) on the at least one storage device 111 coupled to the primary head end controller (column 6, line 64-column 7, line 2). Beal discloses this provides a system that upon a failure of a controller the other controller may perform the duties of the failed controller by operating from the duplicated records stored on the drive (column 7, lines 17-22). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Duso in view of Mann in further view of Craig with storing data from one controller on a storage device of the other controller as taught by Beal in order to respond upon failure of a controller with another controller such that the responding controller may perform the duties of the failed controller by operating from the failed controller's stored session data stored on the storage device.

Craig discloses a session manager records (memory) session data (column 13, lines 46-56). However, the references fail to claim the non-volatile memory. The examiner takes Official Notice that non-volatile memories are notoriously well known in the art to store information long term. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Duso in view of Mann in further view of Craig in further view of Beal to have a non-volatile memory in order to store information long term without losing the information in the event of a system malfunction.

Regarding claim 8, the combined systems of Duso, Mann, Craig, and Beal discloses the method, wherein at the least one storage device comprises a plurality of storage devices (Beal: figure 3, multiple drives 111 1-n), the method comprising:

Replicating (Beal: column 6, lines 58-64) the stored session state data from one of the plurality of the storage devices coupled to the primary head end controller (Duso: 28), to each of the remaining storage devices of the plurality of storage devices coupled to the at least one secondary head end controller (Duso: 29);

Wherein the at least one secondary head end controller (Duso: 29) retrieves the session state data executed by the managing modules of the primary head end controller for continuing the video session (Craig: uses stored information (session state data) in the case to restart an interrupted session; column 14, lines 13-15) with the subscriber equipment.

Regarding claims 9-10, the limitations in claims 9-10 have been met in claims 8-9 rejections. Craig discloses a volatile memory (DRAM (column 11, lines 43-59)), which meets the differing limitation on volatile memory.

Regarding claim 12, the limitations in claim 12 have been met in claim 1 rejection. Beal discloses the additional limitation of a processor 121 for processing session state data produced by modules 107, 105 and memory devices 111, 109 coupled to the modules (column 6, lines 45-column 7, line 56). Craig discloses temporary storage (DRAM: column 11, lines 43-59).

Regarding claim 13, the limitations in claim 13 have been met in claim 1 rejection.

Regarding claim 14, the limitations in claim 14 have been met in claims 4-6 rejections.

Regarding claim 15, the limitations in claim 15 have been met in claim 4 rejection.

Regarding claims 16-17, the limitations in claims 16-17 have been met in claims 4-6, 9-10 rejections.

Regarding claim 18, the limitations in claim 18 have been met in claims 9-10 rejections. Neither Duso, Mann, Craig, nor Beal discloses a centrally networked memory. The examiner takes Official Notice that centrally located memories are notoriously well known in the art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Duso in view of Mann in further view of Craig in further view of Beal to have a central storage in order to reliably share data among head ends without having to connect to another head end's local memory.

Regarding claims 19-21, the limitations in claims 19-21 have been met in claims 9-10 rejections. Beal discloses the additional limitation of local storage devices 111, 109 (figure 3; column 6, line 45-column 7, line 22).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason J. Chung whose telephone number is (571) 272-7292. The examiner can normally be reached on M-F, 7:30AM-5:00PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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JJC



VIVEK SRIVASTAVA
PRIMARY EXAMINER